

Opening Pandora's Box: The Sovereign Debt Crisis and Labour Market Regulation in Greece

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ABSTRACT

As a result of the loan agreements that the Greek government has concluded in the past two years with the International Monetary Fund, the European Central Bank and the European Commission, a policy of internal devaluation has been adopted in an effort to avoid a default of the economy and to allow Greece to remain within the Eurozone. The structural reforms undertaken in line with the loan agreements have been based on the premise that labour market regulation in Greece constituted a significant barrier to growth. To that end, essential features of the Greek labour law system have been amended, with significant implications for the role of the state and for the industrial relations actors. The reforms are not distributionally neutral, but aim to liberalise further and to deregulate key parts of the labour market and industrial relations system, and reduce the size and influence of the welfare state. There is growing evidence that the reforms have led to the deterioration of working and living conditions, while failing to deliver growth.

1. INTRODUCTION

Since 2010 Greece has become an international point of reference due to its unfortunate, pioneering role in the current economic crisis. The potential collapse of the Eurozone due to contagious effects of the Greek economic crisis on other European economies resulted in the gradual establishment of economic support mechanisms at European Union (EU) level and the conclusion of consecutive loan agreements between the Greek government and the so-called Troika (the European Commission (EC) on behalf of the EU, the European Central Bank (ECB) and the International Monetary Fund (IMF)). Financial support from the Troika and especially the IMF has

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been conditional on reductions in public deficits and public spending, initiating drastic labour market reform, and a welfare state retrenchment unprecedented in the post-war period.¹

According to many scholars, the severe and drastic character of the austerity policies imposed in Greece has resulted in far-reaching changes in the industrial relations system and labour law.² The establishment of a model of economic governance that promotes the neoliberal project is driving this development.³ In this approach to governance, labour law deregulation is seen as a means of promoting financial stability.

This article aims to discuss this thesis by providing new insights into the Greek crisis. Austerity politics and imposed structural reforms in Greece have severely weakened the role of trade unions and social policy institutions, resulting in an almost full commodification of labour.⁴ In this regard, certain characteristics of the forced austerity and structural reforms agenda in Greece require our attention.

First, the imposition of austerity measures has been associated with a clear-cut transfer of policymaking process from national to international actors. Second, as a result of the changes introduced, Greek social law is increasingly characterised by individualisation, the fragmentation of the floor of rights in collective bargaining and a return to civil law mechanisms and principles, replacing protective labour law ones. Greece could become 'contagious' once again, but this time spreading labour law deregulation across Europe. Third, austerity policies and labour market deregulation have opened the door to widespread social unrest and political change in Greece.⁵ Perhaps paradoxically, and in an alternative scenario to the one

¹D. Hall, 'Greece: Cuts Watch November 2011' *Cuts Watch Brief* (Public Services International Research Unit, University of Greenwich, 2011), <http://www.psiru.org/cutswatch> (accessed 6 July 2012).

²A. Kapsalis, *Government Adopts Extraordinary Measures to Tackle Economic Crisis*, <http://www.eurofound.europa.eu/eiro/2010/03/articles/gr1003029i.htm> (accessed 14 March 2012); A. Koukiadaki and L. Kretsos, 'The Case of Greece', in M. C. Escande Varniol, S. Laulom and E. Mazuyer (eds), *What Social Law in a Europe in Crisis?* (Brussels: Larcier, 2012), at 189. See also H. Voskeritsian and A. Kornelakis, 'Institutional Change in Greek Industrial Relations in an Era of Fiscal Crisis', Working Paper No 52 (London School of Economics and Political Science, Hellenic Observatory, 2011).

³S. Deakin and F. Wilkinson, 'Marchés du travail, crise financière et réforme: projet d'agenda pour une politique du travail' (2011) 108 *L'homme et la société* 25.

⁴Y. Kouzis, 'The Industrial Relations Landscape in Greece after the Memorandum Agreement' (in Greek) (2011) 181 *Enimerosi* 6, at 10.

⁵The ongoing project of neoliberal social engineering has provoked, since 2010, massive anti-austerity mobilisations of working people. Further, it has resulted in the dramatic rise of SYRIZA (the anti-austerity radical left party) in the two general elections of 2012.

just outlined, such developments may yet initiate a new stage of institutional development and re-regulation across the EU.

The article is organised as follows. Section 2 discusses the way the Greek labour market and employment regulation were conceptualised before and during the emergence of the economic crisis at domestic and international level. Sections 3-6 analyse the procedural and substantive labour market reforms under the first and second loan agreements. Section 7 concludes.

2. THE GREEK LABOUR MARKET: COMPETING VIEWS

The upsurge of the economic crisis in Greece has triggered discussion on the strictness of employment regulation and on the way labour market was structured and over the last two decades in that country. Opinions on the role of labour law are divided. Two main explanations can be observed. The first view analyses the crisis through the prism of Greek exceptionalism. In this perspective, certain distinctive features of the Greek case are responsible for the crisis, including long delays in modernising the regulatory framework, caused in turn by the persistence of vested political interests.⁶ The second perspective, on the other hand, examines the emergence of the Greek crisis as the result of structural weaknesses in the European monetary union project and in the different national varieties of capitalism. According to this view, both the EU project and particular national economic models foundered on the rocks of the global financial crisis and modern geopolitical antagonisms.⁷

Before the crisis, proponents of laissez-faire approaches (including the IMF, the Organisation for Economic Co-operation and Development (OECD) and World Bank) had urged Greek governments to promote far-reaching labour market reforms.⁸ These recommendations were usually in line with

⁶K. Featherstone and D. Papadimitriou, 'The Limits of Europeanisation: Reform Capacity and Policy Conflict in Greece', in K. Featherstone (ed), *Palgrave Studies in European Union Politics* (Basingstoke: Palgrave, 2009), at 39. See also S. Economides and V. Monastiriotes (eds), *The Return of Street Politics? Essays on the December Riots in Greece* (London: Hellenic Observatory, London School of Economics and Political Science, 2009).

⁷K. Dräger, *Sado-Monetarism Rules OK?! EU Economic Governance and Its Consequences*, http://www.euromemo.eu/annual_workshops/2011_vienna/papers_v/index.html (accessed 12 February 2012).

⁸Nevertheless such reforms have gradually been implemented in Greece and in other Eurozone member states since 2010. For a full account of changes in the labour law and industrial relations system that took place since 2010, see Koukiadaki and Kretsos, 'The Case of Greece' above n.2. See also L. Kretsos, 'Grassroots Unionism in the Context of Economic Crisis in Greece' (2011) 52 *Labor History* 265.

the collective bargaining demands of the largest employers' association in Greece, the Hellenic Federation of Enterprises or SEV, over the past two decades.⁹ Typical examples include proposals for adjustment in real wages in line with productivity outcomes; the promotion of flexible forms of work by changing legislation relating to temporary employment; the reduction of severance payments, in particular for white-collar workers; and proposals to abolish the implicit permanent job status of the vast majority of public servants and to allow greater room for collective bargaining decentralisation.¹⁰

Within this approach, employment protection in Greece came to be regarded as a major obstacle to structural change and the liberalisation of domestic markets, while the persistent and powerful opposition of labour and social movements to laissez-faire policies were seen as restricting the state's ability to implement the necessary and appropriate structural changes in the economy. According to studies prior to the upsurge of economic crisis in 2010, Greece had some of the strictest employment protection legislation (EPL) amongst the OECD countries.¹¹

The alleged overprotection of Greek workers by labour law provided a prime opportunity for the national economic and political elites to push a programme of labour law reform justified by the goal of economic 'modernisation'. The policy orientation of the Socialist government, in power from 1996, was that economic modernisation would lead to economic growth and *vice versa*, a notion crystallised in the achievement of the following policies: improvement of public infrastructure through EU funded projects and loans from international creditors; opening of product markets to international competition; financial deregulation and speculative activity that boosted the Athens stock market to unprecedented heights; and radical labour market reforms. These changes accompanied the entry of Greece into the Eurozone in 2001 and the hosting of the 2004 Olympics.¹²

⁹A. Dedousopoulos, 'The State of the Greek Labour Market under Crisis' (in Greek) (Research Report, Hay Group, OMAS, EEDE, May 2012).

¹⁰Y. Kouzis, 'The Neoliberal Restructuring of Labour and the Crisis Alibi' (in Greek), in K. Vergopoulos (ed), *The Map of the Crisis, the End of the Illusion* (Athens: Topos, 2010), at 82.

¹¹C. Ioannou, 'Employment Regulation and Labour Relations in Greece', <http://www2.lse.ac.uk/europeanInstitute/research/hellenicObservatory/> (accessed 13 February 2012); W. Öchel and A. Rohwer, 'Reduction of Employment Protection in Europe: A Comparative Fuzzy-Set Analysis', <http://www.cesifo-group.de/portal/pls/portal/docs/1/1186004.PDF> (accessed 14 April 2012). See also L. Kretsos, 'Union Responses to the Rise of Precarious Employment in Greece' (2011) 42 *Industrial Relations Journal* 453.

¹²S. Kouvelakis, 'The Greek Cauldron' (2011) 72 *New Left Review* 17. An account of the operation of the economic modernisation dogma after 1996 may be found in N. Sevastakis, *Common Country: Aspects of the Public Space and the Antinomies of Values in Contemporary*

As Tsakalotos argues,¹³ the advocates of economic modernisation, having large appeal to voters from all political sides and especially the centre-left and the centre-right, tried to capitalise on their ideological hegemony by constructing not only their own worldview but also that of the opposition. Cultural critiques and social anthropological analyses were provided as explanations for the resistance offered against structural reforms to the economy and the labour law.¹⁴ According to this view, Greece suffered from what La Spina and Sciortino¹⁵ described as the ‘Mediterranean Syndrome’: a low administrative capacity for policy implementation, linking non-compliance with particular institutional and cultural deficiencies.

On the other hand, Kouvelakis¹⁶ has argued that the fall of the military junta in 1974 ushered in a period of ‘social compromise’, under both conservative and PASOK (Socialist) governments, which overlay a society and economy still dominated by small-scale businesses and independent producers. The economic modernisation process of the 1990s and early 2000s cemented in a social compromise that was based on an alliance of the middle classes and small- and medium-sized enterprises (SMEs), with the latter benefiting from increases in consumer credit, the intensification of labour effort through high levels of undeclared work, cheap immigrant labour and widespread tax evasion.¹⁷ The introduction of the euro, as well as increased capital inflows through tourism, shipping and due to the completion of large-scale construction works, such as the Olympics, completed this process.

The reforms of the 1990s and 2000s saw Greece implementing key aspects of the neoliberal economic project. Thus the Greek labour market was not as heavily regulated as both domestic and international supporters of ‘structural reforms’ have been claiming. Labour market flexibility was a central point of reference of the policy agenda of all governments from the 1990

Greece (in Greek) (Athens: Savalas, 2004). See also E. Tsakalotos, *The Values and Value of the Left: An Anti-modernization Tract on the Economy and Society* (in Greek) (Athens: Kritiki, 2005).

¹³E. Tsakalotos, ‘Contesting Greek Exceptionalism: The Political Economy of the Current Crisis’, http://www.e-history.eu/files/uploads/Paper_-_2011.05.16.pdf (accessed 27 March 2012).

¹⁴N. Diamantouros, *Political Dualism and Political Change in Post-Authoritarian Greece* (in Greek) (Athens: Alexandra Press, 2000). See also Sevastakis, *Common Country*, n.12 above.

¹⁵A. La Spina and G. Sciortino, ‘Common Agenda, Southern Rules: European Integration and Environmental Change in the Mediterranean States’, in D. Liefferink, P. Lowe and A. Moll (eds), *European Integration and Environmental Policy* (London: Belhaven Press, 1993), 219–22.

¹⁶‘The Greek Cauldron’, n.12 above, at 21.

¹⁷L. Kretsos, ‘The Effects of the Crisis on the Greek Construction Industry: From the Olympus Mountain to the Kaida Cliff’ (2010) 3 *Construction Labour Research News* 7. See also Tsakalotos, ‘Contesting Greek Exceptionalism’, n.13 above.

onwards.¹⁸ Industrial relations in Greece before the crisis were indeed highly collectivised, but they were not always formal, and growing numbers of workers were being left unprotected by the collective bargaining system and by labour legislation.¹⁹

It was not over-rigid labour law, but rather the inability of the Greek state to increase public revenues and its over-reliance on borrowing to fund consumption and growth, which provoked the twin crises of high national debt and high public-sector deficits. High economic growth rates, in historical terms, were observed over the period from 1994 up to the onset of the crisis in 2008, accompanied by rising levels of public deficit and debt. But the latter cannot be ascribed to the strictness of the Greek labour market. Over this period, corporate profits increased to levels approaching those of the early seventies, while the share of national income accruing to wages has continuously declined since 1996.²⁰ The proportions of taxes paid on income by employed and retired persons is more or less the same as the average for the EU-25 area (35.1% in 2007 and 36.4% in 2006), but the tax rate on corporate profits in Greece is almost half that of the EU-25 (5.9% compared to 33.0%).²¹ Growing inequalities arising from a weak welfare state and low level of social transfers²² became more evident with the outbreak of the crisis. In response, social and political resistance to imposed austerity measures have increased markedly since 2010.²³

We now examine the labour law changes made in Greece since the start of the financial crisis and as a result of the austerity agreements made with the Troika.

3. THE EMERGENCE OF THE DEBT CRISIS AND THE FIRST LOAN AGREEMENT

Following the lowering of its credit rating and the subsequent rapid increase of credit default swap spreads on Greek sovereign debt in 2010, the Greek

¹⁸See generally, Kouzis, 'Neoliberal Restructuring', n.10 above, and Tsakalotos, 'Contesting Greek Exceptionalism', n.13 above.

¹⁹On the significance of this, see generally Kouzis, 'Neoliberal Restructuring', n.10 above.

²⁰Kouzis, 'Neoliberal Restructuring', n.10 above.

²¹INE/GSEE-ADEDY, *INE Annual Outlook for the Greek Economy and Employment*, Annual Outlook 12 (Athens: INE/GSEE-ADEDY, 2010), at 40; European Commission, *The Economic Adjustment Programme for Greece, Fourth Review – Spring 2011*, Occasional Papers 32 (Brussels: Commission, 2011), at 39–40.

²²M. Karamessini, 'Still a Distinctive Southern European Employment Model?' (2008) 39 *Industrial Relations Journal* 510.

²³Koukiadaki and Kretsos, 'The Case of Greece', above n.2; P. Mason, *Why It's Kicking Off Everywhere: The New Global Revolutions* (London: Verso, 2012); J. Milios and D. Sotiropoulos, 'Crisis of Greece or Crisis of the Euro? A View from the European Periphery' (2010) 12 *Journal of Balkan and Near Eastern Studies* 223.

government was unable to access international bond markets. In order to avert a default on its sovereign debts, it agreed a loan, to be advanced jointly by Eurozone states and the IMF. The loan agreement stipulated the provision of €80 billion on the part of the Eurozone states and €30 billion on the part of the IMF.²⁴ In return for this support, it was agreed that the EC, the ECB and the IMF (the 'Troika') would prepare and oversee a programme of austerity coupled with liberalisation of the Greek economy, with the aim of bringing down the public sector deficit to 3% of GDP within three years.

It was in this context that the Greek Ministry of Finance prepared, with the participation of the Troika, a programme for 2010–13, which was set out in a 'Memorandum of Economic and Financial Policies' (MEFP) and a 'Memorandum on Specific Economic Policy Conditionality' (MSEPC) (the Memoranda).²⁵ The MEFP outlined the fiscal reforms, structural and income policies that had to be undertaken by Greece. The Memoranda were annexed to Act 3845/2010²⁶ on 'Measures for the Implementation of the support mechanism for the Greek economy by the Eurozone member states and the International Monetary Fund'²⁷ and enacted into law by the Greek Parliament on 5 May 2010.²⁸ On the basis of the measures outlined in the MEFP, the MSEPC set out specific time-limited commitments on a quarterly basis. With respect to the labour market, the reforms outlined in the Memoranda were aimed at lowering public expenditure by cutting public investment and public sector wages, reforming the pensions system,

²⁴Under the Loan Facility Agreement dated 8 May 2010 and the IMF Standby Arrangement, Greece's lenders undertook to grant specific funds to the country for a period of three years at a 5% interest rate. This was generally regarded as a high level for a bailout loan.

²⁵It has to be stressed here that the loan was to be disbursed in installments, on condition that the Greek government met a number of commitments to service the loan according to a number of agreed conditions and to implement the time-specific measures set out in the Memoranda. It was also stated that the measures to be undertaken by the Greek government would take effect within the framework of the excessive deficit procedure of Art 126(9) TFEU.

²⁶Government Gazette (FEK) 65 A/6-5-2010.

²⁷Art 1 of Act 3845/2010 authorised the Minister of Finance to represent the Greek state and in that capacity to sign any memorandum of understanding, agreement or loan agreement (bilateral or multilateral) in order to implement the programme of the 'support mechanism'. Art 1(4) of Act 3845/2010 provided that any agreements so concluded should be introduced before the Greek Parliament for ratification, but according to Art 1(9) of Act 3847/2010 (FEK 67 A/11-5-2010), which was adopted later, these agreements were to be introduced to the Parliament only for 'discussion' and 'information'. It should be added here that the conclusion of the loan agreement preceded the amendment of Art 1(4) of Act 3845/2010 concerning the need for the ratification of any agreements by the Greek Parliament.

²⁸As we shall see below, Act 3845/2010 served as the legal basis for a number of significant changes in labour law.

downsizing the public sector and privatising a large section of public sector enterprises and utilities. Under the structural policies pillar outlined in the MEFP, a number of further undertakings were given by the Greek government:

in line with the lowering of public sector wages, private sector wages need to become more flexible to allow cost moderation for an extended period of time. Following consultation with social partners and within the frame of EU law, the Government will reform the legal framework for wage bargaining in the private sector, including by eliminating asymmetry in arbitration. The Government will adopt legislation for minimum entry level wages in order to promote employment creation for groups at risk such as the young and long-term unemployed... Employment protection legislation will be revised, including provisions to extent probationary periods, recalibrate rules governing collective dismissals, and facilitate greater use of part-time work.²⁹

Labour market reforms envisaged in the Memoranda encompassed a variety of measures, covering changes to individual and collective labour rights in both the public and private sectors. On the basis that Greece's membership of the Eurozone did not allow for currency devaluation, the underlying rationale for the introduction of the reforms was the need to initiate a process of 'internal devaluation' to restore the competitiveness of the Greek economy. These reforms were not distributionally neutral, and were, indeed, but aimed at further liberalising and deregulating key parts of the labour market and industrial relations system. In that respect, they are in line with the Washington-consensus-inspired policies that the IMF has previously applied to developing economies.³⁰ There was no public consultation over the reforms.³¹ The Greek government justified the absence of consultation on the basis that 'it was not possible to accommodate participatory methods when Greece was about to default on its loans'.³²

²⁹Ministry of Finance, Memorandum of Economic and Financial Policies (Ministry of Finance, 2010) at 12.

³⁰C. Lapavistas, A. Kaltenbrunner, D. Lindo, J. Michell, J. P. Paineira, E. Pires, J. Powell, A. Stenfors, N. Teles, 'Eurozone Crisis: Beggar Thyself and Their Neighbour', Research on Money and Finance Occasional Report, March 2010, at 364.

³¹Y. Ghellab and P. Papadakis, 'The Politics of Economic Adjustment in Europe: State Unilateralism or Social Dialogue?' in International Labour Organisation (ILO) (ed), *The Global Crisis: Causes, Responses and Challenges* (Geneva: International Labour Office, 2011).

³²ILO, *Report on the High Level Mission to Greece* (Geneva: International Labour Office, 2011) at 27.

In the absence of social dialogue procedures, there has been evidence of 'legal mobilisation'³³ on the part of Greek trade unions, at domestic and increasingly at international level. At domestic level, an appeal was lodged before the Council of State against government decisions that provided for wages and pensions cuts and established the incomes policy for 2010, on the basis that the loan agreement that necessitated these changes should have been ratified by a qualified majority of three-fifths of the Parliament.³⁴ The appeal was rejected by the Council of State: it was held that reasons of overriding public interest necessitated the loan agreement, that full compliance with the principles of proportionality and necessity was achieved and that Act 3845/2010 did not need to be adopted by the Parliament by a qualified majority, as the loan agreement did not constitute an international agreement under Article 28 of the Greek Constitution.³⁵

At international level, the General Confederation of Greek Workers (GSEE) filed in July 2010 urgent observations with the ILO Committee of Experts on the Application of Conventions and Recommendations for non-observance by the Greek government of 11 Conventions ratified by Greece.³⁶ On the basis of extensive meetings with all relevant labour market actors in September 2011, an ILO High Level Mission issued a report in late 2011.³⁷ Besides these developments at ILO level, two complaints

³³T. Colling, 'What Space for Unions on the Floor of Rights? Trade Unions and the Enforcement of Statutory Individual Employment Rights' (2006) 35 ILJ 140.

³⁴The lack of ratification is coupled with a further significant constraint in terms of the substantive part of the loan agreement. The agreement stipulates that English law is applicable in the case of disputes pertaining to private law issues arising from the agreement. In addition, the CJEU has sole jurisdiction over the resolution of international and constitutional issues concerning the agreement. For an analysis of the loan agreement, see E. Marias, 'The Loan Agreement between Greece and the Eurozone Member States under the Light of the EU Institutions and EU Law' (in Greek) (2010) 58 *Nomiko Vima* 2204, at 2010.

³⁵Council of State, 668/2012. Contrast the decision of the Greek Council of State with the decision of the Latvian Constitutional Court, which found that the government's decision to reduce pensions by 70% for working retirees and by 10% for other pensioners violated the individual right to social security and the principle of the rule of law. The pension cuts has been said to form a vital part of the Latvian government's programme of austerity measures, under the terms of the IMF- and EU-led €7.5 billion loan agreement. See the analysis of the Latvian case by S. Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy' (2012) 41 ILJ (in this issue).

³⁶ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations: General Report and Observations concerning Particular countries*, Report III (Part 1A), International Labour Conference, 100th Session, Geneva, 2011.

³⁷The tripartite global International Labour Conference Standards Committee extended the mission's mandate to include what were considered to be crucial discussions with the

were lodged by the General Federation of employees of the national electric power corporation (GENOP-DEI) and the Confederation of Greek Civil Servants' Trade Unions (ADEDY) against Greece to the European Committee of Social Rights concerning the changes in the collective bargaining system and the employment contracts for young workers.³⁸ In its submissions to the Committee, the Greek government requested the rejection of the complaints on the basis that the legislative provisions were reasonable measures to enhance the competitiveness of Greek enterprises by means of strengthening the decentralisation of collective bargaining and reducing labour costs. No decision on the substance of these complaints has been issued at the time of writing (May 2012).

Despite the adoption of extensive legal reforms under the aegis of the first loan agreement, problems associated with the worsening of the Greek public finances, a loss of political momentum on the part of the PASOK-led government and the deepening of the crisis in other parts of the Eurozone led to further changes in the programme of reforms. Following four reviews by the Troika of the implementation of the programme (September 2010, November 2010, March 2011 and June 2011), the Memoranda were revised and updated versions published by the Greek government. The most important revision of the programme took place on 1 July 2011, when the Parliament adopted Act 3986 on Urgent Measures for the Implementation of the Mid-term Fiscal Strategy Framework. This mid-term fiscal strategy introduced new austerity measures with a revised implementation plan and a new time-horizon of 2012–15.

The next section discusses in more detail the reforms introduced as a result of the original and revised Memoranda that accompanied the first loan agreement.³⁹

International Monetary Fund (IMF) and the European Union (EU), in order to obtain a full view of the measures being proposed and their possible impact on voluntary obligations undertaken within the framework of the country's membership in the ILO.

³⁸ *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v Greece*, Complaint no 65/2011 and *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v Greece*, Complaint no 66/2011.

³⁹ The paper does not examine the extensive changes that took place in the public sector and social security law. For an analysis of these, see Koukiadaki and Kretsos, 'The Case of Greece', n.2 above.

4. LABOUR LAW REFORMS IN LIGHT OF THE FIRST LOAN AGREEMENT

A. Individual Labour Law: Labour Market Flexibility and the Determination of Wages for Young Workers

As indicated above, the labour market reforms introduced in compliance with the Memoranda encompassed areas of both individual and collective labour law. In order to promote a competitive climate through increasing labour market flexibility, youth employment and creating new forms of work, a number of provisions in Act 3845/2010 outlined the direction of reforms in basic areas of individual labour law. These included dismissal compensation, collective redundancies, overtime costs, wages for young workers and flexible forms of employment. The Act authorised the Minister of Labour to regulate in these areas through Presidential Decrees. However, due to concerns that trade unions would file complaints with the Council of State against the use of Presidential Decrees, the government introduced the reforms via a series of legislative acts.⁴⁰

At a first stage and as part of the objective to amend EPL, Act 3863/2010 on the 'New Social Security System and relevant provisions'⁴¹ facilitated individual and collective dismissals. The amendments in the area of dismissals were in line with the long-established demand by associations representing large enterprises for the deregulation of EPL in Greece.⁴² Contrary to the legal regulation of individual dismissals in Western Europe, the termination of employment under Greek labour law has been permitted without the employer having to justify the action or invoke a potentially fair reason.⁴³ Instead, the employer was subject to certain conditions such as written notification or adequate warning, and compensation was doubled when the proper notice period was not observed. Under Article 75(2) of Act 3863/2010, the notification period is now reduced and as a result of this the compensation for dismissal is also reduced significantly (up to 50%). In

⁴⁰Y. Ghellab and K. Papadakis, 'The Politics of Economic Adjustment in Europe: State Unilateralism or Social Dialogue?' in ILO (ed), *The Global Crisis: Causes, Responses and Challenges* (Geneva: ILO, 2011), at 87.

⁴¹FEK 115 A/15-7-2010.

⁴²N. K. Gavalas, 'The New Measures for the Employment Relations: A First Appraisal of the Announced Presidential Decree' (in Greek) (2010) 7 *Epitheorisi Ergatikou Dikaiou* 793, at 795.

⁴³Art 281 of the Civil Code (abuse of rights) has been the basis for the examination of dismissal by the courts.

addition, the compensation can be paid in two bi-monthly installments.⁴⁴ Although these reforms were justified as promoting competitiveness, by giving employers the opportunity to take advantage of the substantially lower amounts of compensation, in conjunction with the freedom to proceed to dismissals without having to justify them, they may promote the adoption of a short-term solution of reducing costs via dismissals, rather than pursuing longer-term strategies that focus on increasing organisational productivity and innovation.⁴⁵

The changes that were introduced with respect to the thresholds applicable to collective dismissals had the same justification, that is, the reduction of labour costs. According to Article 74(1) of Act 3863/2010, collective dismissals now take place when they affect within the period of one month at least six employees in businesses or undertakings with between 20 and 150 employees, or 5% of the workforce and up to 30 employees in businesses or undertakings with over 150 employees.⁴⁶ By increasing these thresholds, the possibility of the law influencing management decisions is limited, as there is no right to information and consultation in cases that are below these limits. Complementing these changes, Article 17(5) of Act 3899/2010 on 'Financial and Tax Measures for the Implementation of the Programme'⁴⁷ increased the probationary period of employment contracts without limit of time from 2 to 12 months, and as such introduced into the Greek labour market a new form of fixed-term employment contract of one year's duration.⁴⁸

Managerial prerogative has been also reinforced by amendments in the regulation of flexible forms of employment. Act 3899/2010 introduced additional flexibility by effectively reversing Act 3846/2010 on 'employment security safeguards', which had been one of the first legal measures adopted

⁴⁴ Art 75(3).

⁴⁵ On the labour law-productivity link, see S. Deakin and P. Sarkar, 'Assessing the Long-Run Economic Impact of Labour Law Systems: A Theoretical Reappraisal and Analysis of New Time Series Data' (2008) 39 *Industrial Relations Journal* 453.

⁴⁶ Prior to the reform, collective dismissals were those affecting at least, over a period of a month, four employees in undertakings with 20–200 employees, and 2–3% of the workforce but not more than 30 employees over a period of one month in undertakings with over 200 employees.

⁴⁷ FEK 212 A/17-12-2010.

⁴⁸ According to the Greek government, the introduction of a 12-month probationary period was reasonable 'in particular, if the current economic crisis and the instability in Greek enterprises' activity are taken into account' (Government's response (case document no 5) to collective complaint 66/2011 by GENOP-DEI and ADEDY to the European Committee of Social Rights, n 38 above at 10).

by PASOK when it was returned to office in 2010.⁴⁹ Act 3846/2010 had institutionalised a wide range of flexible forms of employment (including telework, part-time work, temporary employment agencies, short-time work and suspension of work), while at the same time providing for certain safeguards. In contrast, Act 3899/2010 extended the period of short-time work on the basis of a unilateral decision by the employer from six months, as stipulated in Act 3846/2010, to nine months per year. The wage increment of 10% payable when a part-time worker worked overtime, which was stipulated under Act 3846/2010, was also abolished; consequently, part-time workers who work more hours than agreed upon in their individual employment contract (up to 40 hours per week) are now entitled to no more than the predetermined hourly rate.⁵⁰ Act 3899/2010 also increased the maximum duration of fixed-term employment from 12 to 36 months, including renewals.

The objective of increasing the scope for flexible forms of employment was also clear in the case of Act 3986/2011 on 'Urgent Measures for the Implementation of the Mid-term Fiscal Strategy Framework', accompanying Act 3985/2011, which outlined a revised fiscal strategy with a new timeframe (2012–15). First, amendments took place with respect to the regulation of fixed-term work: the duration of successive fixed-term employment contracts was extended from two to three years, the possibility of three successive renewals was introduced and the scope of objective reasons for the use of successive fixed-term contracts was widened. Secondly, the scope for the conclusion of agreements between employers and unions on working time arrangements at company level was extended. Building on the provisions of Act 3846/2010, 'associations of persons' acquired the right, under Article 42(6), to negotiate working time arrangements.⁵¹ In addition, the Act stipulated new possibilities for the determination of working time arrangements, including the extension of the time period for the calculation of working time from four to six months and the provision of compensatory time off instead of pecuniary payment for overtime.⁵²

With the objective of promoting youth employment, significant changes regarding minimum wage levels of young people aged 15–24 were also

⁴⁹FEK 66 A/11.5.2010

⁵⁰Art 17(2) of the new Act 3899/2010 also abolished the increment of 7.5%, which was provided by Art 7 of Act 2874/2000, for part-time workers working less than four hours per day and paid on a minimum wage basis.

⁵¹An 'association of persons' can be created in enterprises with less than 20 workers by 15% of workers and in enterprises with more than 20 workers by 25% of the workforce.

⁵²Art 42 of Act 3986/2011.

introduced. Act 3845/2010 included provisions that served as a legal authorisation for the exclusion of young workers and previously long-term unemployed from the scope of the national collective agreement and from generally binding provisions on minimum wages and conditions of work. Following this, Article 2(6) of Act 3845/2010 established that remuneration in the case of a contract for acquisition of work experience of up to one year's duration for unemployed persons up to 24 years of age registered with the Manpower Agency of Greece services should correspond to 80% of the minimum/daily wage. Further, pursuant to Act 3863/2010, young workers of 15–18 years could be employed under contracts of 'apprenticeship' with extended probationary periods and receive 70% of the minimum wage established in the relevant national collective agreement.⁵³ Moreover, Article 74(8) of Act 3863/2010 provided that in the case of new entrants into the labour market aged up to 25, remuneration would correspond to 84% of the minimum or daily wage. There is evidence to suggest that there has not been much take-up of these arrangements as similar terms and conditions were already being applied informally.⁵⁴

B. Collective Labour Law: Collective Bargaining, Mediation and Arbitration

In addition to the changes made to individual labour law, part of the commitment to structural reforms undertaken by the Greek government in the Memoranda included, as we have seen, legal reforms in the area of wage bargaining, especially at sectoral level, including changes to law governing asymmetry in arbitration and the automatic extension of sectoral agreements to those not represented in the negotiations.⁵⁵ The need for reforms in this area was based on the Troika's views that wage-setting in Greece over the past decade had not reflected the country's competitiveness and productivity levels. In order to ensure wage moderation, interventions were made during the first months of the implementation of the Memoranda with respect to the validity of arbitration awards. Article 51 of Act 3871/2010 on 'Financial Management and Responsibility'⁵⁶ provided that arbitration

⁵³Under such apprenticeship contracts, the workers are excluded from the protective provisions of labour legislation on permissible working hours, the start and end of the working day taking into account course schedules, obligatory periods of rest, obligatory paid annual leave, time off for attending school, studying and sick leave (Arts 74(8) and (9) of Act 3863/2010).

⁵⁴ILO, *Report on the High Level Mission to Greece*, n.32 above, at 60.

⁵⁵Ministry of Finance, *Revised Memorandum of Economic and Financial Policies*, 22 November (Ministry of Finance, 2010).

⁵⁶FEK 152 A/1-7-2010.

awards issued by the Organisation for Mediation and Arbitration (OMED) would be of no legal effect in so far as they provided for wage increases for 2010 and the first semester of 2011.⁵⁷ The effects of the three-year wage freeze stipulated, as part of incomes policy, in Act 3845/2010, spilled over into the laws governing the negotiation of the national-level collective agreement, which now provided that no increase should be granted for the first 18 months of the three-year period, and stipulated a 'symbolic' increase for the following 18 months based on the average EU inflation rate.

More importantly, extending such legal interventions in wage bargaining via a radical restructuring of the system of collective bargaining was identified from the start of the programme as an overriding objective of the reforms. Similarly to other continental labour law systems, the system of collective bargaining in Greece has been based, traditionally, on different levels of regulatory mechanisms, with the national general collective agreement determining the minimum wage, and occupational (national and local), sectoral and firm-level agreements providing for additional remuneration. In line with the principle of the 'implementation of the more favourable provision' (*Günstigkeitsprinzip* or *principe de faveur*), if different collective agreements were in conflict, the principle of implementing the provisions most favourable to the workers applied.⁵⁸ It was in this context, and in line with the Troika's recommendations, that changes to the principle were put forward by the Greek government, whose priority 'was to improve productivity and ensure that remuneration was aligned to productivity. In order to achieve this, Greece was faced with two choices: reduced salaries in the private sector by law or creating a more flexible bargaining system'. The latter option was chosen, a fact which, according to the ILO, showed 'confidence in collective bargaining'.⁵⁹

With the objective of moving wage-setting closer to the company level, Article 2(7) of Act 3845/2010 stipulated that the terms of occupational and enterprise agreements could derogate *in pejus* (that is, in a downwards direction) from the terms of sectoral agreements and even the national general collective agreement; in a similar vein, the sectoral agreements could derogate from the national collective agreement. However, following

⁵⁷In addition, it was provided that awards for the period 1 July 2011 to 31 December 2012 should limit any wage increases to those stipulated in the general national collective agreement, that is, a percentage increase equal to the average Eurozone inflation rate.

⁵⁸Art 7 of Act 1876/1990 and Art 680 of the Civil Code.

⁵⁹ILO, *Report on the High Level Mission to Greece*, n.32 above, at 26. But even this preference for a collective bargaining was later abandoned when the Greek government negotiated the conditions for the conclusion of a second loan agreement: see below.

reactions from the social partners, it was agreed to observe the floor of rights set by the national general collective agreement; any reductions of wage levels should take place through the introduction of the so-called 'special firm-level collective agreements'.⁶⁰ According to Article 13 of Act 3899/2010, under a firm-level collective agreement, remuneration and working conditions could deviate from the relevant sector collective agreement as long as they observe the levels set by the national general collective agreement. Such 'special firm-level collective agreements' could be signed by an employer who employed less than 50 employees and the relevant firm-level trade union or, if there was no such union, by the relevant sectoral trade union or confederation. Importantly, there was no requirement for the employer to establish a link between wage reduction and the viability of the company, nor was there any prohibition on redundancies as a result of the conclusion of an agreement. In addition, it was provided that this type of company level agreement could be used to regulate a range of substantive and procedural issues, and the Council of Social Control of the Labour Inspectorate could only issue a non-binding advisory opinion on such matters.

In light of the other changes in EPL, it was anticipated that special firm-level collective agreements would be used as a means to avoid dismissals.⁶¹ Of course, the risk of deterioration of labour standards was increased due to the lack of bargaining power on the part of the employees at firm level.⁶² But there were indications that the legislation did not actually promote such agreements and only 14 were registered with the competent authorities by the summer of 2011.⁶³ Instead, wage reduction and other changes in terms and conditions of employment were most often the result

⁶⁰A prohibition on the extension of collective agreements was also considered but as a result of an agreement reached between the employers' associations and the trade unions it was not finally introduced (A. Kazakos, 'The "Charity" of the Individual Contract' (in Greek), *Kyriakatiki Eleutherotypia*, 12 December 2010, <http://www.enet.gr/?i=news.el.article&id=232458> (accessed 30 May 2012)). But such a prohibition was later introduced on a temporary basis: see our analysis, below.

⁶¹The GSEE guidance stressed that although there is no provision in the Act concerning the prohibition of dismissals during the application of the agreement, a trade union should require the employer to ensure the maintenance of all jobs during the duration of the agreement (GSEE, *Guidance on Collective Bargaining and Collective Labour Agreements: 10 Critical Issues* (in Greek) (GSEE, 2011)).

⁶²G. Katrougalos, 'The Sub-Constitution of the Memorandum and the Other Way' (in Greek), <http://www.constitutionalism.gr/html/ent/967/ent.1967.asp> (accessed 30 May 2012).

⁶³See the government's response (case document no 5) to collective complaint 65/2011 by GENOP-DEI and ADEDY to the European Committee of Social Rights (n 38 above).

of agreements with employees on an individual basis, confirming Kazakos' prediction that if employers could not reach an agreement with the employee representatives, individual negotiations would take place, increasing further the risk of pay insecurity for workers and limiting, in practice, the right to collective bargaining.⁶⁴

The Troika, which attributed the lack of the take-up of the special firm-level collective agreements to the limited number of company-level trade unions in Greece, continued exerting significant pressure for further amendments to Greek labour law.⁶⁵ Subsequently, the fourth revision of the programme in June–July 2011 stipulated that the government should amend Act 3899/2010 if it proved necessary to support greater firm-level wage flexibility. Following this, Article 37(1) of Act 4024/2011 on 'Regulations on pensions, unified wage and grade scale, job redundancy and other provisions to implement Medium-Term Fiscal Strategy Framework 2012–2015' replaced Article 3(5) of Act 1876/1990, and gave to all firms (including those employing less than 50 persons) the capacity to conclude firm-level collective agreements provided that three-fifths of the employees formed an 'association of persons'. In addition, Article 3(5) temporarily suspended (during the application of the Medium-Term Fiscal Strategy Framework, that is until 2015) the application of the *Günstigkeitsprinzip* in the case of the concurrent implementation of sectoral and firm-level collective agreements. Finally, Article 37(6) temporarily suspended, for the same period, the extension of sectoral and occupational collective agreements.

The priority that is given to firm-level agreements over those concluded at sectoral level, in conjunction with the prohibition on extending agreements, points to significant deregulatory trends in the collective bargaining system, with negative implications not only for workers but also for employers who are members of the signatory organisations of the sectoral collective agreements, who now face being undercut.⁶⁶ The representativeness of the 'association of persons' in the negotiations for the conclusion of such

⁶⁴Kazakos, 'The "Charity" of the Individual Contract', n 60 above.

⁶⁵European Commission, *The Economic Adjustment Programme for Greece, Fourth Review – Spring 2011*, Occasional Papers 32 (European Commission, 2011), at 39–40.

⁶⁶The position of the Greek government is that 'the above amendments in the system of ranking of the binding effect of collective agreements do not violate the freedom of collective bargaining, since in any case only the legal representatives of workers at enterprise level have the right to conclude firm-level labour collective agreements' (Government's response (case document no 5) to the collective complaint by GENOP-DEI and ADEDY to the European Committee of Social Rights (n 38 above at 9)).

agreements is particularly problematic, especially in the context of SMEs that make up the majority of Greek companies. This point was stressed by the ILO High Level Mission report, in which it was stated that

the High Level Mission understands that associations of persons are not trade unions, nor are they regulated by any of the guarantees necessary for their independence. The High Level Mission is deeply concerned that the conclusion of 'collective agreements' in such conditions would have a detrimental impact on collective bargaining and the capacity of the trade union movement to respond to the concerns of its members at all levels, on existing employers' organizations, and for that matter on any firm basis on which social dialogue may take place in the country in the future.⁶⁷

The changes made to collective labour law were not confined to issues of collective bargaining, but were extended to the adjudication of disputes via mediation and arbitration. These reforms were designed to address the problem of 'asymmetry' that was identified by the Troika and involved the unilateral right of trade unions to have recourse to arbitration where they had accepted a proposition by the mediator, which was rejected by the employer.⁶⁸ The lack of recourse to arbitration by the latter was introduced as a means of redressing the inequality of bargaining power and guaranteeing the effective functioning of collective bargaining.⁶⁹ In this context, Act 3863/2010 made provision for the reform of the mediation and arbitration procedure.⁷⁰ To that end, Act 3899/2010 amended certain provisions of Act 1876/1990 and redefined the role of OMED. Recourse to arbitration could now take place either through agreement of the parties or unilaterally, under the following conditions⁷¹: either party could have resort to arbitration if the other party had refused mediation; and either party could have resort to arbitration immediately after the decision of the mediator was issued. The latter provision extended to both parties a facility which had been available only to workers under the previous law. In addition, the exercise of the

⁶⁷ ILO, *Report on the High Level Mission to Greece*, n.32 above, at 59.

⁶⁸ Art 16 of Act 1876/1990.

⁶⁹ A. Kazakos, *The Arbitration of Collective Interest Differences According to Act 1876/1990* (in Greek) (Athens: Sakkoulas, 1998). According to case law, the unilateral right of trade unions is consistent with the provisions of the Greek Constitution and of relevant ILO Conventions, with the proviso that resort to arbitration only takes place following the exhaustion of all efforts for a conciliatory resolution of the dispute (Supreme Court decision 25/2004 DEN 2004, 1399; Council of State 3204/1998 DEN 1999, 13; Council of State 4555/1996 DEN 1997, 441).

⁷⁰ Arts 73 and 74.

⁷¹ Art 16.

right to strike was to be suspended for a 10-day period starting from the day on which either party resorted to arbitration. In contrast to the previous regime, under which the arbitrator could regulate any aspect of the collective agreement, arbitration was now limited to determining the basic wage and/or the basic salary.⁷² Other terms and conditions of employment, such as working time, leave arrangements and compensation, could no longer be regulated on the basis of arbitration awards.

5. THE WORSENING OF THE CRISIS AND THE SECOND LOAN AGREEMENT

Following the further deterioration of Greek public finances, the Eurozone meeting in June 2011 concluded an agreement in principle for a second loan agreement. In the context of the need to implement the second loan agreement and to ensure the payment of the sixth installment of the loan, the fifth review stated with respect to the labour market situation:

Despite recent reforms aimed at enhancing the dynamism of the labour market, serious shortcomings in the wage bargaining system remain...The Government will promote discussions with the social partners in order to examine labour market parameters that affect the firms' competitiveness and the economy as a whole. The goal is to conclude a national tripartite agreement addressing the macroeconomic challenges to the economy and to support stronger competitiveness, growth and employment in Greece. All parameters that have an impact on labour costs should be open for discussion, including wages, minimum wages and the national collective agreement, and the several non-wage labour costs, including social contributions.⁷³

In anticipation of the return of the Troika to Greece in the beginning of 2012, the process of implementation of the Private Sector Involvement Plan (PSI) and of the conclusion of a second loan agreement, the Greek government held discussions with the employers' associations and trade unions in January 2012 concerning the range of issues identified in the fifth review. Significant pressure was exerted by the Troika with respect to the freezing of wage increments provided for in the existing national collective labour agreement, the reduction of minimum wages, especially among

⁷²Until 2012, the awards cannot exceed the average EU inflation rate (Art 51 of Act 3871/2010).

⁷³European Commission, *The Economic Adjustment Programme for Greece, Fifth Review – October 2011*, Occasional Papers 87/2011 (European Commission, 2011).

unskilled workers, the abolition of the thirteenth and fourteenth salary (that is, payment of extra month's or two months' salary), and the ending of the 'after-effect' period of collective agreements. A reduction of minimum wage levels to those stipulated in other EU Member States facing similar problems (for example, Portugal, where the minimum wage is set at a lower level than that of Greece) was also considered by the Troika as a prerequisite for the strengthening of the competitiveness of the Greek economy.⁷⁴ These arguments were developed in the letter sent to the Greek government, requesting the opening of discussions between the social partners on these topics. The stance of the Troika on the reduction of wage costs came in sharp contrast to its position during the conclusion of the first loan agreement. In the 2010 EC report, it was stated that the issue of wage reduction had been considered as a potential solution, but was rejected on the basis that it would damage the economy and have minimal effects on competitiveness.⁷⁵

On the basis that a return to the social dialogue would improve the chances of buy-in, the Greek government was in favour of a social partners' agreement on these issues. The implementation of reforms in this area was a prerequisite for the continuation of negotiations with the Troika and the disbursement of the sixth installment of the first loan. However, in the case of failure to reach agreement, the government was prepared to introduce the changes via the legislative route. During the discussions, the employers' associations opposed the reduction of minimum wages, as defined by the national general collective agreement, but were in favour of a three-year freeze in wage and maturity increases and the reduction of social insurance

⁷⁴Paul Thomsen (IMF) stated in an interview: 'The minimum wage [in Greece] is dramatically higher than in other countries similar to Greece and approximates the wage levels of developed countries. In other words, it is much higher than that justified by the productivity of the Greek economy. ('The Minimum Wage Has to be Reduced', *Kathimerini*, 1 February 2012). However, according to recent OECD data, unit labour costs in Greece have been reduced by 2.8% (the biggest reduction in the Eurozone countries) (OECD, *OECD System of Unit Labour Cost and Related Indicators*, Paris, June 2012, <http://www.oecd.org/dataoecd/23/36/50641522.pdf>, last assessed 10 June 2012).

⁷⁵The specific reasons advanced included the following: (i) an imposed cut on private sector wages would probably have implied an even larger disruption in economic activity in 2010-11. (ii) the oligopolistic nature of a number of sectors meant that the effect of any wage reductions would be absorbed by price increases; (iii) Greece's export structure is concentrated in exports of services, demand for which is not price elastic (iv) a cut in private wages would have contributed to a more inequitable distribution of income across society. (see European Economy, *The Economic Adjustment Programme for Greece, October 2011*, Occasional Papers 61/2010, June 2010 (Brussels, 2010), 21).

costs.⁷⁶ On the other hand, GSEE rejected any change in relation to wage costs and stated that the discussion should only focus on non-wage costs, with the proviso that fiscal equivalents would be found so as to minimise the financial losses of the funds. Following discussions, the social partners came to an agreement in February 2012. In a letter sent to the domestic political actors and the EU institutional actors, they outlined their agreement concerning the preservation of the thirteenth and fourteenth salary and the minimum wage levels, as stipulated by the national general collective labour agreement, and the maintenance of the after-effect of collective agreements. However, GSEE did not agree to the employers' proposal to freeze pay increases for the years 2012 and 2013. With respect to non-wage costs, the social partners invited government to negotiate over finding a way to reduce social insurance contributions that could be put on a mandatory, statutory basis.

Despite the agreement reached between the social partners, the pressure by the Commission and the IMF with respect to the introduction of labour market changes continued and culminated to the introduction of specific measures in the second set of Memoranda. To that end, the statement in the Memorandum accompanying the second support mechanism (Memorandum of Understanding on Specific Economic Policy Conditionality) is illustrative:

Given that the outcome of the social dialogue to promote employment and competitiveness fell short of expectations, the Government will take measures to foster a rapid adjustment of labour costs to fight unemployment and restore cost-competitiveness, ensure the effectiveness of recent labour market reforms,

⁷⁶The National Federation of Greek Commerce suggested that a reduction of social insurance costs by 10% in conjunction with the introduction of three-year pay freeze in the private sector and the effective implementation of enterprise-level collective agreements would eliminate the need to reduce further the wages and abolish the thirteenth and fourteenth salary ('ESEE suggests three-year freeze of wages and reduction of social insurance costs' (in Greek) *To Vima*, 11 Jan 2012, <http://www.tovima.gr/finance/article/?aid=438275>, accessed 10 July 2012). The Athens Chamber of Commerce and Industry suggested the creation of special economic zones (SEZ) with a more favourable tax status for investors, a simpler licensing process, and reduced court jurisdiction. Following a proposal by Germany and France, the creation of SEZs has been viewed in a positive light by the European Commission (D. Manifava, *Special Economic Zones in the Cards*, 2 Dec 2011, *Kathimerini*, http://www.ekathimerini.com/4dcgi/_w_articles_wsate2_1_02/12/2011_417284, accessed 10 July 2012). However, concerns have been expressed by Greek employers associations that under such proposals, enterprises located in SEZs will have the right to derogate from a number of labour standards (M. Vasileiou, *Employers ask for a three-year wage freeze* (in Greek) *Ta Nea*, 10 Jan 2012, <http://www.tanea.gr/ellada/article/?aid=4686283>, accessed 10 July 2012).

align labour conditions in former state-owned enterprises to those in the rest of the private sector and make working hours arrangements more flexible.⁷⁷

The absence of due regard to the agreement concluded between GSEE and the employers' associations can be contrasted with the findings of an ILO survey, prepared for the G20 Summit in Pittsburgh in September 2009, which found that social dialogue at national and sectoral level was playing a significant role in the response to the crisis of a number of countries.⁷⁸ More generally, a number of studies have illustrated the positive impact of social dialogue in periods of crisis.⁷⁹ In Greece, the lack of any influence of the social partners not only illustrated the unilateral character of the reforms but also deprived policymakers of all the information necessary for effective policy design, and arguably hindered the chances of maintaining balance in such policies by mitigating their adverse effects on the most vulnerable groups.⁸⁰

6. LABOUR LAW REFORMS IN LIGHT OF THE SECOND LOAN AGREEMENT

On the basis that the outcome of the social dialogue to promote employment and competitiveness 'fell short of expectations', the 2012 Memorandum of Understanding on Specific Economic Policy Conditionality stated that the 'Government will take measures to foster a rapid adjustment of labour costs to fight unemployment and restore cost-competitiveness, ensure the effectiveness of recent labour market reforms, align labour conditions in former state-owned enterprises to those in the rest of the private sector and make working hours more flexible'. To that end, Act 4046/2012⁸¹ aimed

⁷⁷Ministry of Finance, *Memorandum of Understanding on Specific Economic Policy Conditionality* (Ministry of Finance, 2012), at 25.

⁷⁸See L. Rychly, 'Social Dialogue in Times of Crisis: Finding Better Solutions', Industrial and Employment Relations Department (DIALOGUE), Working Paper No 1 (ILO, 2009).

⁷⁹J. Freyssinet, 'Tripartite Response to the Economic Crisis in the Principal Western European Countries', Industrial and Employment Relations Department (DIALOGUE), Working Paper No 12 (ILO, 2010). See also K. Papadakis, 'Restructuring Enterprises through Social Dialogue: Socially Responsible Practices in Times of Crisis', Industrial and Employment Relations Department (DIALOGUE), Working Paper No 19 (ILO, 2010).

⁸⁰Ghallab and Papadakis, 'The Politics of Economic Adjustment in Europe', above n.40, at 90.

⁸¹FEK 28 A/14.2.2012. Act 4046/2012 included as Annexes the MEFP, the Memorandum of Understanding on Specific Economic Policy Conditionality and the Technical Memorandum of Understanding. See also Act 6 of 28 February 2012 of the Ministerial Council (FEK 38 A/28.2.2012) and Guidance by the Ministry of Labour and Social Security 4601/304 (2012).

at accelerating the adoption and implementation of far-reaching structural reforms on the basis of a number of commitments undertaken by the Greek government for the disbursement of the second loan.⁸²

First, Article 5 of Act 6 of 28.2.2012 of the Ministerial Council stipulated the removal of ‘tenure’ in all existing legacy contracts in all companies. Consequently, contracts with definite duration (defined as those expiring upon age limit or retirement) will automatically convert to indefinite duration contracts for which standard layoff procedures apply, that is, the residual private law on abuse of rights (in line with Article 281 of the Civil Code). The provisions on tenure, usually found in banks and state-owned enterprises, formerly provided increased employment protection against dismissal in cases where the employment contract could not terminate before the age limit or retirement on condition without justification. On the basis that such ‘tenure’ provisions are stipulated in collective agreements, the loss of these rights may constitute a violation of Article 22(1) of the Greek Constitution and the EU Charter of Fundamental Rights (Article 30).⁸³

Secondly and more importantly, a radical adjustment of the wage floors was required on the basis that this would ‘help ensure that as the economy adjusts, and collective bargaining agreements respond, firms and employees do not find themselves bound at a lower limit (and a limit which is very high in international comparison)... these measures will permit a decline in the gap in the level of the minimum wage relative to peers (Portugal and Central and South–East Europe)’.⁸⁴ Accordingly, an

⁸² GSEE has indicated its intention to challenge the measures on the basis that they are unconstitutional, contravene ILO Conventions and European social rights (GSEE, *Guidance on the Contravention of the ‘Memorandum of Economic and Financial Policies’ and the ‘Memorandum of Understanding on Specific Economic Policy Conditionality’ to the Constitution and to the International and European Agreements and Conventions: Legal Analysis in Light of Court Applications by Employees and Their Trade Unions* (in Greek) (GSEE, 2012)).

⁸³ Advisory Committee to the Greek Parliament on Law-making, *Report on the Legislative Proposal of the Approval of the Plans of the Financial Facility Agreements between the European Financial Stability Facility (EFSF), the Hellenic Republic and the Bank of Greece, of the Plan of the Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other Urgent Provisions for the Reduction of Public Debt and the Rescue of the Greek Economy* (in Greek) (Greek Parliament, 2012), at 8.

⁸⁴ Ministry of Finance, *Memorandum of Economic and Financial Policies* (Ministry of Finance, 2012), at 22. The ILO report (2011, n.32 above, at 19), which was published before the conclusion of the second loan agreement, stated with respect to the minimum wage levels for young people: ‘Based on statistical information provided by the Hellenic Statistical Authority (EL.STAT) and EUROSTAT, the poverty level in Greece was at €6,000–7,000 per year. On this basis, it was considered that a young person could cover basic needs with a subminimum wage

immediate realignment of the minimum wage level, as determined by the national general collective agreement, was introduced, implying a 22% cut at all levels based on seniority, marital status and whether wages were paid daily or monthly.⁸⁵ A further 10% decline for youth, which applies generally without any restrictive conditions (under the age of 25) was stipulated as well,⁸⁶ and with respect to apprentices, the minimum wage now stands at 68% of the level determined by the national agreement.⁸⁷ The freeze in minimum wage levels was also prescribed until the end of the programme period. In addition, the legislative intervention in the level of wages, in the form of clauses in the law and in collective agreements that provide for automatic wage increases dependent on time, including those based on seniority, were suspended, until such time as unemployment falls below 10%.⁸⁸

From an economic perspective, the wage reduction took place against the backdrop of falling labour costs during 2010 and 2011. Total labour costs in Greece decreased by 14.3% in nominal terms between the first quarter of 2010 and the third quarter of 2011, that is, before and after the first loan agreement.⁸⁹ From a legal perspective, the legislative reduction of minimum wage levels, which were stipulated by the existing national general collective labour agreement, may be constitutionally problematic.⁹⁰ Articles 22(2) and (3) of the Greek Constitution recognise the institution of collective autonomy, that is, the legal capacity of trade unions and employers' associations to determine general working conditions by free negotiation. As such, the power of the legislator with respect to collective autonomy is restricted, and collective negotiations should be recognised as the primary regulatory means of the employment relation.⁹¹ While existing case law has accepted that justifications based on general social interest and linked with the operation of the national economy may justify the legislative determination of

of €584 per month. This amount also corresponded to what was paid in terms of unemployment benefits.' Contrast this with the minimum wage level of €510.95 for young persons that has been established following the second loan agreement.

⁸⁵ Act 6 of 28.2.2012 of the Ministerial Council. The lowest minimum wage is set at €586.

⁸⁶ Act 6 of 28.2.2012 of the Ministerial Council.

⁸⁷ On the basis of an amendment of Art 74(9) of Act 3863/2010.

⁸⁸ Art 4 of Act 6 of 28.2.2012 of the Ministerial Council.

⁸⁹ S. P. Gavroglou, *The Cost of Labour in Greece Before and After the Memorandum* (in Greek) (National Institute of Labour and Human Resources, 2012).

⁹⁰ Advisory Committee to the Greek Parliament on Law-making, Report, n 83 above at 4–5.

⁹¹ G. Leventis, *Collective Autonomy and State Interventionism in Labour Law* (in Greek) (Athens: Sakkoulas, 1981), at 39.

wage levels, the significant reduction of wage levels in this case may be in contravention of the principle of proportionality.⁹²

Continuing with the radical restructuring of the collective bargaining system that started in the context of the first loan agreement, substantial changes were also required in 2012 with respect to the length of collective agreements and their 'after-effect' or 'grace' period in order to 'level the playing field' and foster the re-negotiation of collective agreements. Under the new legislation, all collective agreements can only be concluded for a maximum duration of three years.⁹³ More importantly, collective agreements that have expired will remain in force for a period of maximum three months.⁹⁴ In addition, if a new agreement is not reached, after this period remuneration will revert back to the basic wage, as stipulated in the expired collective agreement, plus specific allowances (based on seniority, number of children, education and exposure to workplace hazards) until replaced by those in a new collective agreement or in new or amended individual contracts. Apart from hindering succession of collective agreements, these amendments may also promote individual negotiations between employers and employees and limit hence the scope for redressing the power imbalance in the employment relationship. There is some evidence that some of the employers' associations (most notably the National Confederation of Hellenic Commerce) intend to conclude sectoral agreements within the time limit in order to protect the collective bargaining system (conditional though upon the prospect of significant wage decreases).

In order to 'bring Greece's minimum wage framework into line with that of comparator countries and allow it to fulfil its basic function of ensuring a uniform safety net for all employees',⁹⁵ it was also intended that the government, together with social partners, would prepare by the end of July 2012 a timetable for an overhaul of the national general collective agreement. The proposal was to replace wage rates set in the national general collective agreement with a statutory minimum wage rate legislated

⁹²Council of State, 2287/1987, No B 1987, 1096.

⁹³Art 2(1) of Act 6 of 28.2.2012 of the Ministerial Council.

⁹⁴Art 2(3) of Act 6 of 28.2.2012 of the Ministerial Council. The previous regime (Art 9 of Act 1876/1990) stipulated a period of six months and was applicable to newly recruited employees during the six-month period. Concerning the position of newly recruited employees, the guidance by the Ministry of Labour and Social Security (no 4601/304) states that the terms of the collective agreement are only applicable if the conditions of Art 8(2) of Act 1876/1990 are satisfied.

⁹⁵Ministry of Finance *Memorandum of Economic and Financial Policies*, n 84 above at 22.

by the government in consultation with social partners. Such an amendment would constitute an unprecedented overhaul of the system of wage determination. The national general collective labour agreement has been traditionally of particular economic and institutional significance, as it has provided a floor of labour rights for employees, whilst influencing indirectly the terms and conditions of employment specified in sectoral agreements. The replacement of collective negotiations with a statutory minimum wage would not only lead to the reduction of wage levels but would also reduce even further the role of the trade unions in the Greek system of employment relations.⁹⁶

On top of the changes in arbitration that were stipulated as part of the first loan agreement, the 2012 reforms went further by eliminating unilateral recourse to arbitration and by allowing instead requests for arbitration only if both parties consent.⁹⁷ It is also stipulated that arbitration is to be confined solely to the determination of the basic wage/salary and does not include the introduction of any provisions on bonuses, allowances or other benefits.⁹⁸ When considering the request, economic and financial considerations must be taken into account alongside legal ones.⁹⁹ The elimination of unilateral recourse to arbitration was consistent with SEV's argument that compulsory arbitration should be abolished so as to allow negotiations to be 'better aligned with reality'.¹⁰⁰ The changes in the system of collective agreements, described above, and the prerequisite of an agreement between the parties for there to be recourse to arbitration, provide an incentive for employers to object to the conclusion of a collective agreement and to the use of arbitration so as to proceed freely instead to negotiations with individual employees.¹⁰¹ Overall, the legislative changes that accompany the second loan agreement do not simply aim to restrict the level of wages and other terms and conditions of employment but to dismantle, in line with the policy of 'internal devaluation', the system of collective bargaining and arbitration and promote instead individual contracts of employment.

⁹⁶ GSEE Guidance, n 82 above at 7–8.

⁹⁷ Art 3(1) of Act 6 of 28.2.2012 of the Ministerial Council.

⁹⁸ This is possibly partly due to concerns expressed regarding certain ambiguities regarding Act 3899/2010 (see OMED submission to the ILO Report (*ILO Report on the High Level Mission to Greece*, at 51).

⁹⁹ Art 3(3) of Act 6 of 28.2.2012 of the Ministerial Council.

¹⁰⁰ ILO Report on the High Level Mission to Greece, at 37.

¹⁰¹ GSEE Guidance, n 82 above, at 10.

7. DISCUSSION AND CONCLUSION

The economic crisis in Greece has acted as a catalyst for the implementation of structural economic and labour law reforms there. These reforms are linked to the competitiveness agenda set out in the original and revised memorandum agreements with the Troika. Further, they are based on a conceptualisation of the Greek labour market as over-regulated and rigid. Nevertheless, as we saw in section 2 above, key features of the Greek labour market before the crisis indicate that certain workforce groups were over-worked, underpaid and vulnerable to widespread labour law violations. The Greek sovereign debt crisis was not caused by regulatory malfunctioning in the labour law system.

Key elements of austerity policies in Greece have worked in the direction of further weakening labour protection by reducing trade union power, abolishing collective bargaining on wages and significantly reducing wages. In addition, job insecurity is on the rise. There has been an increase in the level of unemployment by more than 25% since 2010 (in the first quarter of 2012 the unemployment rate was 22.6% for the entire working-age population and 52.7% for young workers). In parallel to these developments, non-standard and atypical employment arrangements have expanded to unprecedented levels for the Greek economy.¹⁰² According to the latest data of Labour Inspectorate Authorities (SEPE) the labour law changes have resulted in a substantial increase in the conversion of full time to part time contracts. The total amount of conversions (resulting either from a decrease in working days per week/month or in working hours per day), was 16,461 in 2009. It increased to 26,253 in 2010 and soared to 58,962 in 2011. Undeclared work is also on the rise and is thought to have represented 36.3% of all employment contracts in June 2012.¹⁰³ According to SEPE in 2012, one in four companies in the private sector had not paid its employees for three months or more.¹⁰⁴

Despite such profound deregulation in the labour market and significant reductions in nominal labour costs, the Greek economy entered its fifth consecutive year of recession in 2012. Further, the national debt continued to follow upward trends since 2009 (from 115% of GDP in 2009 to 165%

¹⁰²S. Lampousaki, *Sharp Increase in Flexible Forms of Labour*, <http://www.eurofound.europa.eu/ewco/2011/05/GR1105029I.htm> (accessed 18 February 2012).

¹⁰³See <http://www.tovima.gr/finance/article/?aid=462019> (accessed 10 June 2012).

¹⁰⁴See <http://tvxs.gr/news/ellada/sepe-kakos-ergodotis-sxedon-1-stoys-3> (accessed 15 June 2012).

in 2012).¹⁰⁵ According to projections by the GSEVEE Institute for Small Enterprises (IME-GSEVEE) in July 2011, about 183,000 companies were planning to close their operations in the immediate future, putting at risk almost 250,000 jobs.¹⁰⁶ In a similar vein, the Institute of Commerce and Services of National Confederation of Hellenic Commerce stated in late 2011 that about 60,000 companies had closed since 2009 as a consequence of the austerity policies imposed by the loan agreement between the Greek government and the Troika.¹⁰⁷

The crisis and the policies followed after its upsurge have put at serious risk even the health conditions of the population. The suicide rate has increased dramatically, while a significant rise is also observed in HIV diseases (due to incidences of deliberate self-infection by individuals to obtain access to a faster admission onto drug substitution programmes) and in the proportion of the population seeking medical attention from their street clinics (from 3–4% before the crisis to about 30% in August 2011).¹⁰⁸

In light of these developments, it is possible to argue that the cure has been worse than the disease. In the absence of coordinated and adequate action at EU level and changes in the productive model of Greek economy, the continuation of austerity measures dictated by the loan agreements is not only a break with the protective function of social law at national level, it is also in contradiction with European and international labour standards. At EU level, it points to a regulatory model that favours a ‘race to the bottom’ in terms of social standards as a means to promote the objectives of European market integration.¹⁰⁹

Nevertheless, forced deregulation and structural reforms have their limits. As the Greek case shows, populations frustrated by austerity policies may expand social unrest and public anger at the mainstream political

¹⁰⁵ A. Dedousopoulos n 9 above.

¹⁰⁶ IME-GSEVEE, ‘Economic Climate Survey July 2011’, http://imegsevee.gr/index.php?option=com_content&view=article&id=333%3A24-08-2011-2011-0-49-995-&catid=52%3AAdeltia-tupou-ime-gsevee&Itemid=93 (accessed 23 June 2012).

¹⁰⁷ See <http://www.imerisia.gr/article.asp?catid=26519&subid=2&pubid=112778841> (accessed 18 June 2012).

¹⁰⁸ A. Kentikelenis, M. Karanikolos, I. Papanicolas et al., ‘Economic Crisis, Austerity and the Greek Public Health System’ (2011) *European Journal of Public Health* 4.

¹⁰⁹ Symptoms of a contagion of labour market deregulation are already evident in other peripheral EU Member States (these are Ireland, Portugal, Spain and Italy). On the significance of these trends see Escande Varniol, Laulom and Mazuyer (eds), *What Social Law in a Europe in Crisis?*, n.2 above.

institutions. Such reactions may in turn trigger political and regulatory change at a broader European level, weakening the strength of neoliberalism. For this reason, in the current crucial stage of renegotiation of labour standards in Europe, the social actors and especially trade unions are challenged to provide a new alternative model of Social Europe, by building stronger channels of international solidarity.